

APPEAL NO. 061189
FILED JULY 24, 2006

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on November 22, 2005. The hearing officer resolved the disputed issue by deciding that respondent 2 (claimant) is entitled to supplemental income benefits (SIBs) for the first quarter. Records of the Texas Department of Insurance, Division of Workers' Compensation (Division) reflect that the hearing officer's decision was appealed but that the hearing officer's decision became final on March 3, 2006. In an Order for Attorney's Fees (Order) dated May 3, 2006, the hearing officer approved \$1,829.71 of the requested \$2,377.75 attorney's fees requested by the appellant (attorney). The attorney had represented the claimant at the CCH on the disputed issue of entitlement to first quarter SIBs. The Order reflects that the fees are to be paid pursuant to Section 408.147(c) and 28 TEX. ADMIN. CODE § 152.1(f) (Rule 152.1(f)). The attorney appeals the Order, contending that the hearing officer abused his discretion by reducing the hourly requested rate from \$200.00 to the \$150.00 per hour rate "required under Section 408.221(f) and by reducing the mileage reimbursement amount." No response was received from Respondent 1 (carrier) or from the claimant.

DECISION

Reversed and rendered in part and reversed and remanded in part.

The attorney requested 10.70 hours for attorney services at the rate of \$200.00 per hour, 3.30 hours for legal assistant services at the rate of \$50.00 an hour and \$72.75 mileage reimbursement for a total requested fee of \$2,377.75. The hearing officer approved 10.70 hours for attorney services at the rate of \$150.00 per hour, 3.30 for legal assistant services at \$50.00 per hour and \$59.71 expenses for a total of \$1,829.71 for services rendered from November 3 through November 22, 2005. The attorney contends that the hearing officer abused his discretion in failing to approve attorney's fees at \$200.00 per hour as requested by the attorney.

The standard of review in an attorney's fees case is abuse of discretion. Appeals Panel Decision (APD) 022337, decided October 30, 2002. Since this case involves a claimant's attorney's fees in a SIBs dispute in which the claimant prevailed, Section 408.147(c) and Rule 152.1(f) apply. Both of these provisions speak in terms of reasonable and necessary attorney's fees and provide for payment of the attorney's fees by the carrier. Rule 152.4(d) provides for a maximum hourly rate for legal services by an attorney of \$150.00; however, pursuant to Rule 152.1(f), Rule 152.4 regarding guidelines for legal services does not apply to a claimant's attorney's fees where the claimant prevails in a SIBS dispute. APD 970805, decided June 18, 1997.

The Division's Attorney Fee Processing System (AFPS) reflects that the attorney provided a justification text for the fees requested stating:

I WAS HIRED IN THIS MATTER IMMEDIATELY AFTER THE BRC. AS A RESULT A GREAT DEAL OF TIME WAS NECESSARY DURING A SHOR[T] PERIOD TO GET UP TO SPEED OF THE CLAIM BEFORE THE EXPEDITED CCH. ON THE 3RD & 7TH OF NOV/05 I PERFORMED LEGAL RESEARCH INTO SEVERAL SIBS RELATED ISSUES INCLUDING PARTIAL DARS PARTICIPATION EFFECT OF LIMITED EDUCATION FAST FOOD ONLY TYPES OF JOB SEARCHES[,] DEPRESSION AND PARTIAL VOCATIONAL REHAB. ON 11/22/05 I TRAVELED 2.4 HRS ROUND TRIP TO [City 1] & SPENT .9 IN CONF WITH MY CLIENT BOTH BEFORE & AFTER THE CCH. FOR SUPPORT OF THE 200 HRLY FEE SEE APPEALS DECISION 030301, DECISION 002523 & DECISION 030293.

The hearing officer's log text states:

I READ THE APPEALS PANEL DECISIONS CITED BY CL ATTY. HOWEVER, CL ATTY FAILS, IN HIS JUSTIFICATION TEXT, TO SUPPORT THE HOURLY FEE HE REQUESTS. THE QUESTIONS PRESENTED WERE NOT PARTICULARLY NOVEL, HE DOES NOT INDICATE THAT HE HAS ANY PARTICULAR CERTIFICATIONS, HE DOES NOT PRESENT ANY INFORMATION IN REGARD TO NORMAL FEES IN AREA OR FOR THIS WORK ABOVE THE \$150 PER HOUR RATE. THERE WAS NOTHING UNUSUAL ABOUT THE FACTS OF THIS CASE OR THE EFFORT NEEDED TO PREPARE, OTHER THAN A SHORT TIME PERIOD. CL'S ATTY HAS PRESENTED INSUFFICIENT EVIDENCE TO SUPPORT HIGHER THAN CUSTOMARY FEE FOR HIS WORK, DESPITE THAT IT IS SIBS CASE.

Included with the attorney's appeal is what appears to be a copy of the original Application for Attorney's Fees (DWC Form-152) and attached thereto is a much more detailed justification text ("affidavit") than shown on the AFPS. The justification text attached to the DWC Form-152 states that attorney is Board Certified in Workers' Compensation Law, that he is familiar with attorney's fees that are reasonable and necessary, that he is familiar with the hourly fee reasonable and necessary for legal work performed in the area and that the \$200.00 per hour fee is reasonable and necessary. The justification text in the AFPS is either incomplete or a greatly abbreviated version of the full justification text. We agree with the attorney that "it is not apparent if the hearing officer considered such justification or not" in that the hearing officer's log text states that the attorney "does not indicate that he has any particular certifications" and that the attorney "does not present any information in regard to normal fees in area" which is clearly not the case in the full justification.

The attorney requested mileage expense for 150 miles in the amount of \$72.75. The hearing officer reduced the claimed amount to \$59.71 with the only notation being "Exceeded Guidelines." Rule 152.4(c)(8) Guidelines for Legal Services provides for "actual costs that are reasonable and necessary" for travel. Rule 152.5(b)(1) provides

that the Division shall allow expenses necessary including “(1) travel expenses at the rate set for state employees” to attend a “hearing more than 25 miles from the attorney’s office nearest to the location of the . . . hearing.” The requested attorney fees were for legal services from November 3 to November 22, 2005. Travel reimbursement for mileage for the period of October 1 to December 31, 2005, was 48.5 cents per mile. Calculating the claimed 150 miles times 48.5 cents is \$72.75, the amount claimed by the attorney. We hold the hearing officer abused his discretion in improperly reducing claimed \$72.75 mileage reimbursement request to \$59.71 on the basis that it “Exceeded Guidelines.” We reverse the portion of the Order on the mileage reimbursement and enter a new Order that the attorney is entitled to the requested \$72.75 mileage travel expense.

We reverse the Order and remand the attorney’s fees matter to the hearing officer for the hearing officer to consider the attorney’s full justification text and the factors set forth in Section 408.221(d) in determining whether the \$200.00 hourly rate should be approved.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Division, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See APD 92642, decided January 20, 1993.

The true corporate name of the insurance carrier is **LIBERTY MUTUAL FIRE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS
350 NORTH ST. PAUL, SUITE 2900
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge